IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 3559 of 2007

Date of Decision: 20.12.2007

M/s Mahalaxmi Oil Mill, Julana and another

…Petitioners

Versus

State of Haryana and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Munish Singal, Advocate,
for the petitioner.

Ms. Ritu Bahri, DAG, Haryana,
for the respondents.

M.M. KUMAR, J.

The instant petition filed under Article 226 of the Constitution is directed against order dated 22.12.2006 (P-6), passed by the Haryana Tax Tribunal, Chandigarh (for brevity, 'the Tribunal), in STA Nos. 247 to 251 of 2006-07, which pertains to the assessment years 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96. In pursuance to the order dated 15.6.2006, passed by the Revisional Authority, an additional demand of Rs. 13,02,180/- has been created. The matter travelled to the Tribunal in appeal and the assessee-petitioner No. 1 filed an application for stay of the recovery on the

ground that it has no cash in hand or bank balance or any other source to clear the dues. It has further been pleaded that its business is lying closed. The Tribunal rejected the plea and ordered payment of the assessed amount in instalments, as is evident from the concluding para of the order of the Tribunal.

Mr. Munish Singal, learned counsel for the petitioners has referred to the original orders of assessment alongwith the assessment years. He has drawn our attention to the table at page 9, which is as under:-

Financial Year	Date of original Assessment Order	Date of issue of Revisional Notice
1991-92	20.08.1993	21.01.2003
1992-93	12.08.1994	21.01.2003
1993-94	22.03.1995	21.01.2003
1994-95	18.03.1997	21.01.2003
1995-96	27.11.1998	21.01.2003

A perusal of the aforementioned table shows that assessment for the financial year 1991-92 was completed on 20.8.1993 and for the financial year 1992-93 on 12.8.1994 and so on and so forth. It is, thus, evident that except the assessment year 1995-96, where the assessment was completed on 27.11.1998, the Revisional Authority has issued notices after the expiry of five years and the additional demand has been created.

Ms. Ritu Bahri, learned State counsel has placed reliance on the second proviso of Section 40 of the Haryana General Sales Tax Act, 1973 (for brevity, 'the Act') to argue that on the basis of revision of assessment pertaining to one assessment year, the revision of

subsequent assessment years can be made and in such a case the period of limitation of five years as provided by first proviso of Section 40 of the Act would not be attracted.

Having heard learned counsel for the parties at some length, we are of the considered view that at this stage we are not in a position to express any opinion on the merits of the controversy as the same is live before the Tribunal. The question as to whether the period of limitation of five years as provided by proviso to Section 40 of the Act would be available to the Revisional Authority or not or whether second proviso would apply is a debatable issue. However, at this stage, we are satisfied that the ends of justice would be met if the petitioners are asked to deposit the demand raised in respect of assessment year 1995-96 because notice by the Revisional Authority in respect of that assessment year was issued on 21.1.2003 and the assessment was completed on 27.11.1998. The additional demand of Rs. 1,65,795/- has been created in respect of the assessment year 1995-96. Therefore, the petitioners shall deposit an amount of Rs. 1,65,795/- and in respect of other assessment years they may furnish surety. The order of the Tribunal stands modified to that extent. Before parting we clarify that any observation made in this order shall not be construed as an expression of opinion on the merit of the controversy by the Tribunal. It shall decide the controversy without being influenced by any of the observations made by us.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAKESH KUMAR JAIN)
JUDGE

December 20, 2007
Pkapoor